

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CODY LEAVITT,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT,
et al.,

Respondents.

Case No. 2:13-cv-02018-JAD-NJK

ORDER

Petitioner has submitted a motion for reconsideration (Doc. 6). For the reasons stated below, the court denies the motion.

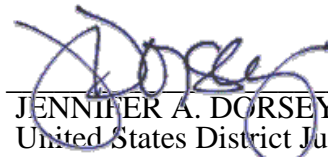
Petitioner first argues that because he was not challenging his sentence, the court should not have construed the petition to be pursuant to 28 U.S.C. § 2254. Petitioner's citations to *Harrison v. Gillespie*, 640 F.3d 888 (9th Cir. 2011) (en banc),¹ and *Stow v. Murashige*, 389 F.3d 880 (9th Cir. 2004), are inapposite. Those decisions held that a person may file a habeas corpus petition before trial, and thus before entry of a judgment of conviction, pursuant to 28 U.S.C. § 2241 to raise a claim that a trial would violate the Double Jeopardy Clause of the Fifth Amendment. Petitioner did not raise a double-jeopardy claim in his petition, and he is in custody under a judgment of conviction of a state court. Therefore, § 2254 applies. It does not matter that petitioner is not challenging his sentence.

¹Petitioner actually cited to the superseded panel decision. The court has corrected the citation for him.

1 Next, petitioner argues that the court erred in its alternative construction of the petition as an
2 appeal from the Nevada Supreme Court's denial of his petition for a writ of mandamus, because he
3 was relying upon the All Writs Act, 28 U.S.C. § 1651. The All Writs Act, 28 U.S.C. § 1651, allows
4 the court to grant extraordinary writs where the court has jurisdiction. However, the All Writs Act
5 does not confer jurisdiction by itself; instead, another statutory or constitutional provision must
6 confer jurisdiction upon the Court. *Stafford v. Superior Court*, 272 F.2d 407, 409 (9th Cir. 1959).
7 The court had concluded that it did not have appellate jurisdiction over the Nevada Supreme Court,
8 and nothing in the motion for reconsideration would cause the court to depart from that ruling.

9 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (Doc. 6) is
10 **DENIED.**

11 Dated: June 18, 2014.


JENNIFER A. DORSEY
United States District Judge